THE HIGH COURT OF UTTARANCHAL AT NAINITAL
Appeal From Order No. 520 Of 2001
(Old No. FAFO 941 of 1996)

The New India Assurance Company Ltd., Station Road, Moradabad.
…**Appellant.**

Versus

1. Sri Gulam Naqi, Son of Tausif Hussain, Village Isaipur, P.O. Radhaut Kichaur, District Meerut.
2. Smt. Talat Iqbal, widow of Sarfaraz Raza, Resident of 56, Katra Abbu Turab Khan, Lucknow. (Claimants)
3. Aziz Khan son of Ahmad Khan, Resident of Lohaghat, District Pithoragarh (Driver of Truck No. USR – 7109).
4. Sri Tasleem Ahmad S/O Sri Matloob Ahmad Mohalla Nai Basti, P.S.Kotwali, District Moradabad.

… **Respondents.**

With

Cross Objection filed by Claimant Smt. Tilat Iqbal
Sri T.A.Khan, Advocate, learned counsel for the appellant-Insurance Co.
Sri Z.U.Siddiqui & Sri H.S.Rawal, Adv., learned counsel for the claimant-respondent no.2/Cross Objector.

Date November 14, 2006.
PC: Hon'ble B.S. Verma, J.

This appeal under Section 173 of the Motor Vehicles Act, 1988 (***for short the Act***) is directed against the judgment and award dated 17-08-1996 passed by the Motor Accidents Claims Tribunal/III Additional District Judge, Nainital (***for short the Tribunal***), in Motor Accident Claim Petition No. 320 of 1987, Gulam Naqi and another Vs. Aziz Khan and others, whereby compensation of Rs. 1,92,000/- along with interest @ 12% per annum from the date of filing of the petition till the date of payment has been awarded in favour of the claimants. Out of this amount, appellant Insurqance Company was directed to pay compensation of Rs. 1,50,000/- along with interest and the respect amount was payable by the insured-owner. Aggrieved by the impugned order, the Insurance Company has come up in appeal. On the other hand, the claimant Smt. Talat Iqbal has filed cross-objection for enhancement of the compensation amount, which shall be considered at appropriate place in the body of the judgment.

At the outset, it may be mentioned that initially the present claim petition was filed by Sri Gulam Naqi, the father of the deceased Sarafraz Khan. The claimant has mentioned in the column no.7 which is meant for noting the dependents of the deceased the names of Smt. Tilak Bano (wife) and five other persons. It appears that the Office of the Tribunal lost sight of this fact and no defect was pointed out in the claim petition at the time of its presentation. It was only after 30-10-1993, when a compromise was entered between the claimant no.1 (father of the deceased) and the Insurance Company-appellant that on 17-6-2004 the learned Tribunal passed order on the application of the widow of deceased (paper No. 51-C) and she was arrayed as party to the proceeding and thereafter the case proceeded on merits. It is also not disputed that in the order of succession, the name of widow comes above the father. The defect which had arisen in the claim petition at the beginning stood cured by the order of the Tribunal dated 17-6-1994. After impleadment of widow as a claimant in the petition, all the parties to the proceedings have participated in the proceedings.

Relevant facts of the case are that Sarafraz Khan aged about 30 years, earning Rs. 590/- per month as salary lost his life in a motor vehicle accident, which occurred on 28-1-1986 in front of Tikonia Road Park Haldwani at about mid day due to rash and negligent driving by the driver of Truck No. USR- 7109. The clamant no.1 is the father and claimant no.2 is the widow of the deceased and as mentioned above, claim petition was filed by the father of the deceased for compensation of Rs. 3,00,000/- under Section 110-A of the Old Act of 1939. The truck in question was owned by Sri Taslim Ahmad and it was duly insured with the appellant-Insurance Company.

The learned Tribunal framed the following issues in the case:-

1. Whether the accident in question was caused due to rash and negligent driving of truck No. U.S.R.–7109 by its driver Aziz Khan, O.P.No.1?

2. To what amount of compensation, if any, is the petitioner entitled and from whom?

The learned Tribunal recorded the evidence lead by the parties, heard them and after perusing the evidence on record, it came to the conclusion that the accident resulting into fatal injuries to the deceased occurred due to rashness and negligence on the part of the truck driver. The leaned Tribunal also held that the claimants are entitled for compensation being father and widow of the deceased. On the point of quantum of compensation, the learned Tribunal came to the conclusion that the deceased would have been getting at least Rs. 2600/- per month and after deducting 1/3rd towards his personal expenses, the loss of dependency was assessed at Rs. 1750/- per month but for purposes of determination compensation, loss of dependency was taken only Rs. 1400/- per month or Rs. 16,800/- per annum which was rounded to Rs. 16,000/. The deceased was aged 30-32 years. The multiplier of 12 was applied in this case thereby total compensation of Rs. 1,92,000/- was determined and accordingly the claim petition was decreed.

In this appeal, the main ground of challenge raised by the Insurance Company appellant are that the claimant –respondent no.2 is not entitled to the compensation because she had re-married to another person on 16-10-1992. It was also contended that the father of the deceased, who is claimant no.1, had entered into compromise with the Insurance Company therefore, the dispute had finally settled. Besides, the quantum of compensation has also been challenged.

The learned counsel for the appellant-Insurance Company has argued that the learned Tribunal committed error in awarding compensation to the widow of the deceased, who had remarried to some other person much after the date of accident. Though by this argument, the appellant is challenging the quantum of compensation in appeal. The Insurance Company has nowhere taken such a plea in its written statement nor it pressed this point at the time of framing of

issues by the Tribunal. This argument was raised before the learned Tribunal. The motor accident took place on 20-1-1986 and the deceased died at the spot. Admittedly the widow of the deceased had remarried on 16-10-1992 after more than six years. It is not disputed that the person to whom she married second time also died on 19-11-1995. In my view, the position as existing on the date of accident is relevant for consideration of the Tribunal for award of compensation and remarriage by the widow will not adversely affect her right for compensation and the learned Tribunal has rightly held that widow of the deceased is entitled to compensation.

So far as the contention that father of the deceased had entered into compromise with the Insurance Company is concerned, this argument too has no force. Any compromise taking place between particular persons is binding upon those individuals and in the instant case, the father of the deceased was not empowered by the widow of the deceased to enter into compromise on her behalf. As mentioned earlier, all the parties have participated in the proceedings after the order dated 17-6-1994 was passed till its conclusion. A bald assertion that by way of compromise between the father of the deceased and Insurance Company, the matter came to an end is misconceived. The proceedings of the claim petition had not terminated at any point of time prior to passing of the impugned award dated 17-8-1996. The grounds raised in the present appeal are superficial and devoid of merit.

It may be mentioned the appellant-Insurance Company has assailed the impugned award only on the point of quantum of compensation in paragraph no. 5 of memo of appeal. It is settled law that the appeal by the insurer can be filed on limited grounds. In the instant case, the owner as well as the Insurance Company has contested the claim petition from the initial stage till the conclusion of the proceedings before the learned Tribunal. Moreover, no application under Section 110-C(2-A) of the Act, which corresponds to Section 170 of the new Motor Vehicles Act 1988 was moved by the appellant and no such permission was granted in favour of the insurer.

In the facts and circumstances of the case, in view of the law laid down by the Apex Court in the case of ***"National Insurance Company Ltd. Vs. Nicolletta Rohtagi and others"[(2002) 7 S.C..C. 456]*** the appeal is not maintainable. In that case, it has been observed that ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle".***

Subsequently, in the case of ***"Punam Devi and another Vs. Divisional Manager, New India Assurance Co.Ltd. and others" [(2004) 3 SCC, Page 386],*** it was held by the Apex Court *that "Insurance company neither pleading nor leading evidence that the offending driver had no licence-Claims Tribunal awarding compensation-Held, quantum of compensation cannot be challenged and the only ground open to the Insurance Company is under S.149(2), to show that the insured was negligent or that he failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of the vehicle- Since the Insurance Company failed to discharge this burden, High Court erred in allowing the appeal."*

Now coming to the cross-objection filed the claimant nno.2, it may be noted that in the cross-objection no such grounds have been mentioned so as to warrant interfere in the impugned award. The submission made on behalf of the claimant cannot be given weight, because it is settled principle of law that quantum of compensation must be fair. In the case at hand, a sum of Rs. 1,92,000/- has been awarded by the Tribunal. It has been submitted that multiplier of 18 ought to have been applied instead of 12. The Tribunal in its award has already considered all the relevant aspects the case. The monthly income of the deceased was mentioned Rs. 590/- p.m. or Rs. 7,080/- per annum; but the learned Tribunal has considered the revised pay and other admissible D.A. which the deceased would have been getting had he not met accidental death and thereby annual loss of dependency was

taken Rs. 16,000/-. To work out amount of compensation the attending circumstances as well as some guess-work are taken aid of to work out just compensation. The multiplier of 12 in no case can be said to be improper, therefore, the compensation of 16,000/- x 12 = 1,92,000-00 Since the widow and the father of the deceased are the claimants. The claimant-widow has been inducted in service in the office of her deceased husband as clerk. Taking into consideration all the facts and attending circumstances on record, I find that the compensation awarded by the learned Tribunal is just and proper. The cross-objection filed by the claimant cannot be allowed.

In the result, the appeal preferred by the Insurance Company as well as the cross-objection filed by the claimant-widow of the deceased deserves to be dismissed.

The appeal is accordingly dismissed. The cross-objection filed by the claimant-respondent no.2 is also dismissed. The judgment and award under appeal is upheld. No order as to costs.

The amount in deposit with this Court, if any, be transmitted to the Motor Accident Claims Tribunal concerned for being paid to the claimant-respondents as per award passed by the learned Tribunal.

(B.S. Verma, J.)

RCP